APPENDIX A

Statutes Involved

The State statutes charged to have been violated are explicitly referred to in the indictment by section and subdivision number, as well as by citation of the enacting statute. These constitute eleven sections, or subdivisions of sections—and no others—of the former New York Penal Law, repealed effective September 1, 1967, as follows:

[i] §1897, subd. 2 [count 13]:

§1897. Possession of weapons and dangerous instruments and appliances.

* * *

2. Any person who has in his possession any firearm which is loaded with ammunition, or who has in his possession any firearm and, at the same time, has in his possession a quantity of ammunition which may be used to discharge such firearm is guilty of a felony. Such possession shall not, except as provided in subdivision three of this section, constitute a felony if such possession takes place in such person's home or place of business.

"Firearm" is defined as follows:

§1896. Definitions. As used in sections eighteen hundred ninety-seven, eighteen hundred ninety-eight, eighteen hundred ninety-nine, nineteen hundred, nineteen hudred one, nineteen hundred two, nineteen hundred three, nineteen hundred four and nineteen hundred five, the following terms shall mean and include:

* * *

3. "Firearm," any pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed upon the person.

The virtually identical provisions of the current Penal Law are as follows:

§265.05 Possession of weapons and dangerous instruments and appliances

* * *

2. Any person who has in his possession any firearm which is loaded with ammunition, or who has in his possession any firearm and, at the same time, has in his possession a quantity of ammunition which may be used to discharge such firearm is guilty of a class D felony. Such possession shall not, except as provided in subdivision three of this section, constitute a felony if such possession takes place in such person's home or place of business.

§265.00 Definitions

As used in this article and in article four hundred, the following terms shall mean and include:

* * *

3. "Firearm" means any pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed upon the person.

[ii] §1897, subd. 3 [counts 8, 28 and 42]:

§1897. Possession of weapons and dangerous instruments and appliances.

* * *

3. Any person who has in his possession any firearm, gravity knife, switchblade knife, billy, blackjack,

bludgeon, metal knuckles, sandbag, sandclub or slungshot is guilty of a misdemeanor, and he is guilty of a felony if he has previously been convicted of any crime.

The virtually identical provision of the current Penal Law is as follows:

§265.05 Possession of weapons and dangerous instruments and appliances

* * *

3. Any person who has in his possession any firearm, gravity knife, switchblade knife, billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slungshot is guilty of a class A misdemeanor, and he is guilty of a class D felony if he has previously been convicted of any crime.

[iii] §1897, subd. 9 [counts 9-12, 14-27, 29-41 and 43-48]:

§1897. Possession of weapons and dangerous instruments and appliances.

* * *

9. Any person who has in his possession any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another is guilty of a misdemeanor, and he is guilty of a felony if he has previously been convicted of any crime.

The weapons, rifle and shotgun, are defined as follows:

§1896. Definitions. As used in sections eighteen hundred ninety-seven, eighteen hundred ninety-eight,

eighteen hundred ninety-nine, nineteen hundred, nineteen hundred one, nineteen hundred two, nineteen hundred three, nineteen hundred four and nineteen hundred five, the following terms shall mean and include:

* * *

11. "Rifle," a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

12. "Shotgun," a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

The virtually identical provisions of the current Penal Law are as follows:

§265.05 Possession of weapons and dangerous instruments and appliances

* * *

9. Any person who has in his possession any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another is guilty of a **class A misdemeanor**, and he is guilty of a **class D felony** if he has previously been convicted of any crime.

Appendix A

§265.00 Definitions

As used in this article and in article four hundred, the following terms shall mean and include:

* * *

11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

[iv] §160 [counts 2 and 3]:

Printed in Brief for Samuels *et al.*, at 36.

[v] §161, subd. 1 [counts 1 and 4]:

Id. at 36-37.

[vi] §161, subd. 2 [counts 2 and 4]:

Id. at 36.

[vii] §161, subd. 4 [counts 3 and 4]:

Id. at 37.

[viii] §163 [counts 6 and 7]:

Id. at 37.

The single provision of the current Penal Law, §240.15, combining these sections and subdivisions of the former Penal Law, is printed, *ante*, at 34.

[ix] §580, subd. 1 [count 4]:

Printed in Brief for Samuels *et al.*, at 37.

[x] §580-a [count 5]:

§580-a. Definition of conspiracy as a felony

If two or more persons conspire to commit the crime of murder, kidnapping, robbery in the first degree, illegally selling narcotics, arson or extortion, and if some act besides the agreement to commit such crime be done to effect the object of the agreement by one or more of such persons, each of them is guilty of a felony.

[xi] §223 [count 5]:

§223. Arson in third degree

A person who wilfully burns, or sets on fire a vessel, car, or other vehicle, or a building, structure or other erection, or who wilfully and maliciously burns or sets on fire any personal property of another person, such personal property being of a value of twenty-five dollars or over, under circumstances not amounting to arson in the first or second degree, is guilty of arson in the third degree.

Statutory procedural provisions governing the form and contents of the indictment are contained in the New York Code of Criminal Procedure, and are as follows:

§295-b. Simplified indictment, what to contain

The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A statement of the specific crime with which the defendant is charged.

§295-c. Statement of crime, what to contain

The statement of the crime shall contain the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault, or the like, a brief description of it, as is given by statute. The statement of crime may also contain a reference to the statute defining the crime.

§295-d. Form of Simplified indictment

A simplified indictment shall be signed by the district attorney, and may be substantially in the following form:

Supreme court, county of
(stating the proper county) or

County court of the county of, (stating the proper county), or court of general sessions of the county of New York.

The people of the state of New York against A. B.

The grand jury of (here insert the name of the county, or of the city, or of the city and county, in

which the indictment is found), by this indictment, accuse A. B. of the following crime:

A. B.
District attorney of the county of

§295-e. Charging crime in separate counts

The indictment must charge but one crime, except that where the acts complained of may constitute different crimes, such crimes may be charged in separate counts, and each count shall be numbered consecutively; as, for instance:

First Count:

Burglary in first degree, contrary to penal law, §402.

Second Count:

Grand larceny in first degree, contrary to penal law, §§1290, 1294.

Third Count:

Buying or receiving stolen or wrongfully acquired property, contrary to penal law, §1308.

§279. Charging crime in separate counts and consolidating indictments and informations

When there are several charges for the same act or transaction, constituting different crimes or the same crime alleged to have been committed in a different manner or by different means, or for two or more acts or transactions connected together or constituting parts of a common scheme or plan, or for two or more acts or transactions constituting crimes of the same or a similar character, instead of having several

indictments or informations, the whole may be joined in one indictment or information in separate counts, and if two or more indictments or informations are found in such cases, the court may order them to be consolidated; provided, however, that where the charges involve two or more acts of transactions constituting crimes of the same or a similar character which are neither connected together nor parts of a common scheme or plan, the court, in the interest of justice and for good cause shown, may, in its discretion, order that the different charges set forth in the indictment or information or indictments or informations, be tried separately. The joinder or consolidation of indictments or informations shall not be prevented by the fact that different penalties may be imposed for conviction upon the several crimes charged.

§295-g. When bill of particulars to be filed

Upon the arraignment of the defendant, or at any later stage of the proceedings, the court shall, at the request of the defendant, direct the district attorney to file a bill of particulars of the crime charged.

Other New York statutory provisions involved are:

Judiciary Law §596, subd. 3 [repealed by Laws of New York, 1967, ch. 49, §1]:

Printed in Brief for Samuels *et al.*, at 37-38.

Provisions of the federal Constitution and statutes involved are as follows:

Appendix A

THE CONSTITUTION OF THE UNITED STATES OF AMERICA:

ARTICLE VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES:

28 U.S.C. §2283:

Printed, *ante*, at 10.

42 U.S.C. §1983:

Printed, *ante*, at 10.

18 U.S.C. §2385:

Printed in Brief for Samuels *et al.*, at 38.

28 U.S.C. §2201:

Creation of remedy.—In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

APPENDIX B

Pleas, Applications and Motions Addressed to Original Indictment

Indictment No. 1294—67

Date	*Defendant*	*Application or Motion*	*Date of Disposition*	*State Supreme Court Justice*	*Disposition*
6-21-67	All defendants	Plea of Not Guilty	6-21-67	Livoti	
7-17-67	Kourouma	Demurrer	1-10-68	Shapiro	Sust'd as to 1st, 4th & 5th [*Reported in* 55 Misc. 2d 823, 286 N. Y. S. 2d 924]
7-17-67	Kourouma	Inspect Grand Jury Minutes	1-18-68	Shapiro	Indictment Dismissed
7-17-67	Kourouma	Set aside the indictment	1-18-68	Shapiro	Indictment Dismissed
7-31-67	Kourouma	Withdrew motion of 7/17/67 for 8/9/67	7-31-67	Shapiro	Granted
7-31-67	Kourouma	Set aside indictment for adverse publicity and/or Unconstitutional Statute	1- 5-68	Shapiro	Denied
10-23-67	Kourouma	Supplemental Affidavit in support of motions	1- 5-68	Shapiro	Denied
10-30-67	Kourouma	Reply affidavit of	1- 5-68	Shapiro	Denied

		in support of motions to censure the Dist. Attorney			[Reported—see last item]
6-27-67	Samuels	Reduction of bail	6-30-67	Conroy	Granted
8- 7-67	Rookard	Motion to set aside indictment for adverse publicity	1-18-68	Shapiro	Indictment Dismissed
7-19-67	Fernandez	Bail Reduction	7-27-67	Shapiro	Granted
7-19-67	Fernandez	Demurrer	1-10-68	Shapiro	Grt'd as to 1st, 4th & 5th
7- 5-67	Anderson and Noel	Inspection of Grand Jury Minutes	1-12-68	Farrell	Indictment Dismissed
7-13-67	West	Inspection of Grand Jury Minutes	1-18-68	Farrell	Indictment Dismissed
7-17-67	West	Demurrer	1-12-68	Farrell	Indictment Dismissed
6-29-67	Smith	Inspection of Grand Jury Minutes	1-18-68	Shapiro	Indictment Dismissed
7-19-67	Smith	Bail Reduction	7-27-67	Shapiro	Granted
8-11-67	Smith	Bail Reduction	8-11-67	Farrell	Granted

APPENDIX B (Continued)

Pleas, Applications and Motions Addressed to Original Indictment
Indictment No. 1294—67

Date	*Defendant*	*Application or Motion*	*Date of Disposition*	*State Supreme Court Justice*	*Disposition*
7-12-67	Ellis	Inspection of Grand Jury Minutes	1-18-68	Shapiro	Indictment Dismissed
8- 3-67	Ellis	Demurrer	1-10-68	Shapiro	Granted 1st, 4th, 5th counts
8-30-67	Ellis	Severance of Ind. #1224 & #1223	1-12-68	Farrell	[Denied indictments were never joined.]
6-27-67	Ferguson	Bail Reduction	6-30-67	Conroy	Granted
7-10-67	Ferguson	Demurrer	1-10-68	Shapiro	Granted 1st, 4th, & 5th counts [*Reported in* 55 Misc. 2d 823, 286 N. Y. S. 2d 924]
8- 8-67	Ferguson	Join in Kourouma's motion	8- 9-67	Shapiro	Granted
8- 8-67	Ferguson	C/N Constitutional composition of the Grand Jury	1- 2-68	Shapiro	Denied [*Reported in* 55 Misc. 2d 711, 286 N. Y. S. 2d 976]

Pleas, Applications and Motions Addressed to Superseding Indictment

Indictment No. 134—68

Date	*Defendant*	*Application or Motion*	*Date of Disposition*	*State Supreme Court Justice*	*Disposition*
1-20-68	All defendants	Plea of Not Guilty	1-20-68	Shapiro	
2- 5-68	Fernandez	Demurrer	2- 9-68	Shapiro	Denied
2-20-68	Fernandez	Wiretap Evidence	2-27-68	Shapiro	Denied
2-26-68	Fernandez	Composition of Grand Jury	3- 4-68	Shapiro	Denied
2-26-68	Fernandez	Separate Trial	2-26-68	Shapiro	Denied
2-26-68	Fernandez	Inspection of Grand Jury Minutes	2-27-68	Shapiro	Denied
2-26-68	Fernandez	Bill of Particulars	2-27-68	Shapiro	Granted
2-26-68	Fernandez	Motion to Suppress			
2- 5-68	Ferguson, Harris, Stewart, McPherson & Stanford	Demurrer	2-13-68	Shapiro	Denied
2-20-68	Ferguson, *et al.*	Hearing on Wiretap. Inspection of Grand Jury Minutes	2-27-68	Shapiro	Denied

APPENDIX C (Continued)

Pleas, Applications and Motions Addressed to Superseding Indictment

Indictment No. 134—68

Date	*Defendant*	*Application or Motion*	*Date of Disposition*	*State Supreme Court Justice*	*Disposition*
2-26-68	Ferguson, *et al.*	Bill of Particulars	2-27-68	Shapiro	Granted
2-20-68	Ferguson, *et al.*	Vacating Search Warrant	6-24-68 9-20-68	Farrell	Denied
2-26-68	Samuels, Taylor, Rookard, Smith	Unconstitutional Selection of Grand Jury	3- 4-68	Shapiro	Denied
2-26-68	Samuels, *et al.*	Bill of Particulars, Separate Trial, Copies of Statements	2-27-68	Shapiro	Granted
2-26-68	Samuels, *et al.*	Vacating Search Warrant	6-24-68 9-20-68	Farrell	Denied
2-15-68	Noel	Demurrer	2-27-68	Shapiro	Denied
1-29-68	Kourouma	Demurrer	2- 9-68	Shapiro	Denied
2-25-68	Kourouma	Wiretap	3- 1-68	Shapiro	Denied
2-25-68	Kourouma	Bill of Particulars	3- 1-68	Shapiro	Granted
2-27-68	Kourouma	Release of Exculpatory Material	3- 1-68	Shapiro	Denied

2-27-68	Kourouma	Severance	3- 1-68	Shapiro	Denied
2-25-68	Kourouma	Setting Aside Indictment as Unconstitutional	3- 1-68	Shapiro	Denied
5- 6-68	Kourouma	Brief on Motion to Suppress	{6-24-68 {9-24-68	Farrell	Denied
2-15-68	Haynes	Join in Motions of other defendants	Decided with others	Various Justices	Various
2- 2-68	West	Demurrer	2- 9-68	Shapiro	Denied
2-20-68	West	Inspection of the Grand Jury Minutes	2-27-68	Shapiro	Denied
2-20-68	West	Motion to Suppress	{6-24-68 {9-20-68	Farrell	Denied
3-12-68	West	Hearing on Motion to Suppress	3-12-68	Farrell	Withdrawn by Attorney
2-23-68	West	Bill of Particulars	2-27-68	Shapiro	Denied
2-18-68	Kourouma	Order to Show Cause, Censuring District Attorney	3-14-68	Shapiro	Denied [*Reported in* 159 New York Law Journal No. 53, March 18, 1968, pp. 1, col. 3; 21, cols. 2-5; 2 Cr. L. 2490-2492 (March 27, 1968)]

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